

BANABANS: RE-PLANTING ACTION

DAILY SUMMARIES

Notwithstanding the footnote to the Summary for 19 November (which was based on a misunderstanding) arrangements have been made to continue distribution of daily summaries until the end of the current legal action.

Attached is the summary for 20 November; the Court did not sit on 21 November.

Pacific Dependent Territories Department

ROTAN TITO AND OTHERS v. SIR ALEXANDER WADDELL AND OTHERS
(RE-PLANTING ACTION)

SUMMARY OF PROCEEDINGS, THURSDAY, 20 NOVEMBER 1975.

1. The day was again occupied by Mr Macdonald (Counsel for the Banabans) presenting arguments about his clients' claim for specific performance of the re-planting obligation or damages in lieu.
2. Generally speaking, the day seems to have gone rather badly for the plaintiffs. It began to emerge from the exchanges between the Judge and plaintiffs' Counsel that Mr Justice Megarry may probably be inclining towards the view that he is not likely to award specific performance and that any damages awarded in lieu should be no more than nominal or minimal.
3. BPC Counsel argued that a case had not been made for specific performance and that if any damages were awarded, they should be related to the cost of supplying the Banabans with coconuts, etc., up to a level they would have received had re-planting been successfully undertaken, rather than to what it would have cost to undertake the re-planting exercise as such. At one stage Justice Megarry suggested that the plaintiffs might prefer to be awarded damages rather than specific performance, a suggestion which Mr Macdonald hotly denied. The Judge reminded Mr Macdonald that in his evidence Tobuke Rotoa had said that Rabi was the Banabans first priority, and he added that the Banabans would probably not spend any damages awarded to them on Ocean Island. The Judge also made the point that he could not see it as being in the best interests of the Banabans if he were to order specific performance for the small part of Ocean Island to which the action relates if this merely meant that the Banabans were bound to have to find from their own resources substantial sums of money to rehabilitate other parts of the Island. Mr Macdonald replied that since 1940 the Banabans had regarded Ocean Island as their second home, which they were anxious to rehabilitate, and he added ^{that} their improved financial position since 1974 would enable them to rehabilitate other areas of the Island. There was an acrimonious exchange between Counsel for the plaintiffs and BPC when Mr Macdonald sought to introduce a new element into the plaintiffs' case by suggesting

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that damages should be awarded to his clients for lost opportunities to live on Ocean Island.

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